

4COM NETWORK SERVICES BROADBAND SERVICE AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1. In these Conditions:

Accepted Order: means an Order which has been accepted by the Company, acceptance being indicated by notice from the Company that the Service is to be provided;
Agreement: means any agreement made subject to these Conditions that shall incorporate these Conditions;

BT: means British Telecommunications plc;

A Call is defined as the connection of one or more parties via the network or the PSTN by which the ability to transmit or receive digital data or other information is made possible. This applies to one and two way traffic and includes any recorded and/or automated transmissions and/or the reception of data;
Company: means 4Com Network Services Ltd of One Lansdowne Plaza, 24 Christchurch Road, Bournemouth, BH1 3NE. Registered in England Number 06472696;

Company Equipment: means any equipment owned by the Company and used in connection with the provision of a colocation service, or which is supplied by the Company for lease by the Customer under an Accepted Order;

Customer: means any person or organisation with whom the Company enters into an Agreement subject to these Conditions;

Customer Equipment: means any equipment owned by the Customer and used in connection with the provision of a colocation service, or which is supplied by the Company for purchase by the Customer under an Accepted Order;

Domain Name: means any name and appropriate classification and/or geographic locator registered with an appropriate domain registry and converted to an Internet Address by means of a Domain Name Server (dns);

Internet Address: means such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify himself and/or his computer or computers to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer;

Internet: means the global data network comprising interconnected networks using TCP/IP to which the Company's provider is connected in order to supply access to its Customers;

ISP: means an Internet Service Provider;

Leased Equipment: means any equipment owned by the Company and leased to the Customer; Network Operator: means the legal entity or entities responsible for the operation of a communications network;
OLO: means a Network Operator other than BT (or Other Licenced Operator);

Password: means the alphanumeric characters chosen and used exclusively by the Customer at his own risk for the purpose of securing and maintaining the exclusivity of his access to the Company's service;

PDN: means the Public Data Network operated by a PTO as defined by the Telecommunications Act 1984;

POLO: is the pence per minute "payment to OLO" rate payable by BT to the Company's telecommunications provider from time to time for the termination of a Call originated on the BT telecommunications system to a Customer as set out in BT's carrier price list from time to time; PSTN: means the Public Switched Telephone Network operated by a PTO as defined by the Telecommunications Act 1984;

PTO: means a Public Telecommunications Operator as defined by the telecommunications Act 1984;

Retail Rates: mean the rates for retail telecommunications services provided by 4Com as set out in 4Com's retail price list from time to time;

RIPE: means the Reaseux IP Europeans – RIPE administer and provide technical co-ordination necessary to enable the operation of a pan-European IP network. RIPE manage the allocation of all IP's in Europe;

Service Commencement Date: means the date identified as the delivery date on the Company's first invoice to the Customer;

Service: means the services described in the current Company literature together with such Value Added Services to be provided by the Company to the Customer but in any event include the provision of data network services using TCP/IP. Representations made by the Company's employees or agents will not form part of this Agreement unless confirmed in writing by the Company prior to the purchase of this service;

TCP/IP: is the abbreviation for Transmission Control Protocol/Internet Protocol;

Usage Charges: means such charge for such predetermined unit of time and/or volume of data together with any charges related to Value Added Services from time to time provided by the Company, in each case at the rates set out or referred to in the Company's published tariffs and/or such as may be agreed in writing between the Customer and the Company; Unless stated otherwise, the monthly inclusive transfer is limited to either 100Gb, 200Gb, 500Gb, or 750Gb dependent on the monthly package provided. Usage which exceeds the agreed allowance within the specified monthly package will be charged at the Company's standard rates of £1.00 per Gb. All Usage Charges will be invoiced to the Customer monthly in arrears, and must be settled by Direct Debit.

User Name: means such a sequence of alpha numeric characters as are used from time to time by the Customer to identify himself to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer;

2. USAGE

1. The Customer hereby agrees to:

1. Accept and abide by the 4Com Acceptable Use Policy as published on the 4com website at www.4com.co.uk and as may from time to time be changed.
2. Refrain from transferring any illegal material (including but not limited to material which may be deemed to be offensive, abusive, indecent, defamatory, obscene, menacing or in breach of copyright, privacy or other rights) to or from other users of the service or the PDN and the other privately owned and operated services to which the Company may from time to time provide access;
3. Refrain from sending menacing, offensive, abusive or annoying messages (commonly referred to as, but not exclusively, "spam" or Unsolicited Commercial email "UCE"), whilst using the service via the Company or any other ISP;
4. not divulge their Password to any third party and use all reasonable endeavours to keep the same confidential and inaccessible to third parties;
5. keep the Company informed of any change to the Customer's address as set out overlaid and other such information as may affect the payment of charges due;
6. immediately cease to use and return any Internet Addresses allocated by the Company to the Customer on termination of this Agreement;
7. not to announce by any means any and all Internet Addresses allocated to or by the Customer by the Company as part of an autonomous system unless the addresses originate from inside the Company's network and the Customer has obtained permission from the Company to operate an autonomous system;
8. not to use or permit the usage of the Service in an unlawful manner or in contradiction of published legislation and regulations governing the Internet; and
9. include the above restrictions in all the Customer's on selling conditions using the Company's Service and not to resell a bandwidth greater than that purchased and contracted from the Company unless linked to the internet through another provider in addition to the bandwidth provided by the Company (dual homed) when the restriction will apply at the aggregated data rate.
10. The Company reserves the right to restrict or block internet traffic to or from a Customer server in the event of a failure to abide by the published terms of the Acceptable Use Policy. This may include, but not exclusively, the transmission of unsolicited email.
11. The Company reserves the right to make an administrative charge as a result of abuse of the Acceptable Use Policy.
12. By default, FTTC is limited to 40Mb downstream & 2Mb upstream – packages providing up to 10mb upstream are available, pricing for which is available upon request.

3. EQUIPMENT

1. Customer Equipment shall:
 1. at all times be at the Customer's risk;
 2. be insured by the Customer against all risks;
 3. be subject to the terms and conditions of the landlord or owner of the building in which the equipment is located; and
2. Customer Equipment which is supplied by the Company pursuant to a purchase order shall:
 1. remain the property of the Company until full payment for the Customer Equipment in cleared funds has been received by the Company, at which time title to the relevant Customer Equipment shall pass to the Customer; and
 2. be supplied without any warranty, representation or condition, whether expressed or implied by common law or statute and all such warranties, representations and conditions are excluded to the fullest extent permitted by law, save that any manufacturers' or suppliers' warranties that are capable of assignment shall be assigned by the Company to the Customer.

4. LIABILITY

1. The Company shall not be liable for the following to the extent permitted by the applicable law:
 1. indirect damages, loss of profits, business revenue, goodwill or any economic loss;
 2. any claim made against the Customer by another third party that does not follow a breach of these Conditions by the Company;

3. any loss or damage to the Customer caused by or arising from any act or omission of the Customer, any PTO or Value Added Service supplier, or other customers or persons; or
 4. any act caused as a result of force majeure or beyond the Company's control.
2. The Company's total liability for any loss or damage suffered by the Customer if applicable, shall not exceed the aggregate of all charges payable or paid by the Customer for the Service supplied in the 12 month period beginning on the Service Commencement Date or its anniversary in which the event giving rise to the claim occurs.
 3. Neither party excludes or limits its liability to the other for death or personal injury resulting from the proven negligence of either party, its employees or agents.

5. CHANGES TO THE SERVICE

1. If any Network Operator shall discontinue the provision of telecommunications services to the Company or shall alter by modification, expansion, improvement, maintenance or repair the telecommunications services or any part thereof provided to the Company or shall disconnect the Customer's apparatus from the PSTN, PDN or internet, the Company shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

6. SUSPENSION

The Service may be suspended, or suspended during peak times by the Company without notice and without prejudice to the Company's rights of termination under clause 7 in the event of the following:

1. Failure by the Customer to make any payment to be made to the Company on its due date.
2. If the Customer does or suffers anything to be done which jeopardises the Service or any network to which the Customer is from time to time connected.
3. If the Customer's credit limit has been exceeded or if the Customer is otherwise in breach of these Conditions.
4. No such suspension shall affect the liability of the Customer to pay charges and other amounts to the Company, and without limitation, the annual subscription charge will continue to accrue. During suspension the Company reserves the right to refuse to release the Customer's Internet Address as issued by the Company.

7. TERMINATION

This Agreement shall remain in force for a minimum period of 84 months for all products, from the date of an Accepted Order. Termination can be effected as follows:

1. By the Customer

1. The Customer may terminate this Agreement by giving 3 months' written notice, which may expire at any time following the minimum term, or other term as shown on the Service Agreement, from the Service Commencement Date. Such notice must be sent to the Company's place of business via recorded delivery. Email notification will not be accepted as notice of termination of Agreement.

2. By the Company

The Company may terminate this Agreement at any time and without notice if:

1. the Customer commits any breach of this Agreement including, but without limitation, non- payment of any subscription charges; or
2. by at least 1 months written notice to the Customer; or
3. the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a limited company) goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Supplier reasonably apprehends that any of these events is about to occur in relation to the Customer and notifies the Customer accordingly;
3. The Company reserves the right to invalidate any Customer's User Name and Internet Address issued to the Customer following termination of this Agreement.
4. Domain name hosting and transfer requests for DNS records must be in writing with the authorised signature of the domain owner. There is no charge for the transfer, but a small charge may be made for administration.
5. Domain name transfers will not be made until all outstanding amounts have been paid by the Customer.
6. Domain names shall remain the property of the Company until all outstanding amounts have been paid by the Customer except in such situations where the domain name has been previously registered and paid for in full by the Customer or third party.
7. No refund of subscription charges will be made to the Customer upon termination of the Agreement by either the Company or the Customer.
8. The Customer shall at his own cost return to the Company all equipment, cables and literature belonging to the Company within 5 days of final completion of the Agreement and ensure that it arrives in good working order.
9. The Company has the right to terminate the Contract immediately if the Customer or any of its employees or agents engages in any conduct that is prejudicial to the Company or in the event of non-payment of the Fees by the Customer within thirty (30) days of the due date for payment.
10. Upon receipt by the Company of Notice of Termination, all invoices, including the termination invoice, will become due for immediate payment.
11. Upon termination, the provision of the Services shall immediately cease and the Customer shall:
 1. pay all outstanding fees and charges due under this Contract for the full duration, including (but not limited exclusively) contract administration costs of £100 and excess bandwidth charges;
 2. at its own cost, remove all its equipment from the premises without delay (providing all outstanding fees under this Contract are paid);
 3. return to the Company any materials and restricted information belonging to the Company.
12. The Company reserves the right to impose a charge equal to the full cost of Broadband service activation or of Broadband migration should the Customer terminate Service within 12 months of service delivery.

8. NOTICES

1. Any notices under or in connection with this Agreement shall be delivered in writing to the Company's place of business via Recorded Delivery, or to such email address that the Company may have notified to the Customer for that purpose (not including termination notice).
2. Suspension notices for non-payment of charges will be deemed as delivered by facsimile to the relevant facsimile number as the Customer may have notified.

9. EXPENSES OF THE COMPANY

The Customer shall pay to the Company all costs and expenses (so that any legal fees shall be based on indemnity basis) incurred by the Company in enforcing any of these Conditions, or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Customer in the event that legal processes cannot be enforced at the address last notified to the Company.